WP(C) 4206/2006

BEFORE

HON’BLE MR.JUSTICE RANJAN GOGOI

The petitioner, who is a Lower Division Assistant in the Office of the Deputy Commissioner, Kamrup (undivided) went on deputation to the Office of the Settlement Officer at Guwahati some time in the year 1980.He was promoted to the post of Upper Division Assistant in the year 1997 and was required to join the Circle Office at Chandrapur. However, at the instance of the Settlement Officer, Guwahati Resettlement Operation, the petitioner continued to work under the Settlement Officer. In the year 2001 the petitioner was asked to join the establishment of the Deputy Commissioner, Kamrup which order, also, the petitioner did not carry out. Thereafter, as the petitioner continued to serve as a Lower Division Assistant he had moved this Court by instituting a proceeding registered and numbered as WP' No.2274/06. In the said writ petition the Court directed due consideration of his case. Thereafter, on 9.8.2006

the Deputy Commissioner, Kamrup (Metro) passed an order cancelling the promotion of the petitioner. Such cancellation was made on the ground that the petitioner had refused to carry out the order promoting him to the post of Upper Division Assistant. Aggrieved, this writ petition has been filed.

The facts stated above make it abundantly clear that though the petitioner was promoted to the post of Upper Division Assistant as far back as in the year 1997 and on such promotion he was required to work in the allotted office under the control of the Deputy Commissioner, the petitioner has continued, all along, to work under the Settlement Officer, Guwahati. While there is some amount of disobedience on the part of the petitioner in not carrying out the order of the superior authority, the said act, at best , could have invited disciplinary action against the petitioner. No such action had been initiated against the petitioner at any point of time so as to confer legitimacy to the cancellation of the promotion order as a measure of penalty. That apart , as the employer had lent the service of the petitioner to the Settlement Officer, it was always open for the Deputy Commissioner, Kamrup (Metro) to bring the aforesaid deputation of the petitioner to an end in accordance with the law. No such action was also taken by the said authority. Instead the promotion of the petitioner had been cancelled which, as already noticed, appears to have been taken as a penal measure. No such penal action against the petitioner could have been taken in the manner adopted in the present case.

For all the aforesaid reasons, the Court deems it proper to interfere with the order dated 9.8.2006 passed by the Deputy Commissioner, Kamrup (Metro) . The said authority will now give a suitable posting to the petitioner in the post of Upper Division Assistant and allow the petitioner to work in the said post . However, it is made clear that the petitioner will not be entitled to any arrear salary as Upper Division Assistant. This, the Court considers it proper to direct on the ground that the petitioner had not performed any duties in the post of Upper Division Assistant.

The writ petition, consequently, is partly allowed to the extent indicated above.